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ECF

Honorable Paul A. Engelmayer  
United States District Judge for  
the Southern District of New York  
40 Foley Square, Courtroom 1305  
New York, NY 10007

Re: United States of America v. Alimehmeti,  
16 Cr. 398 (PAE)

Judge Engelmayer:

As ordered by the court, docket entry # 75, we submit the following response.

Title 18 U.S.C. section 1542 increases the maximum statutory sentence to 25 years should the charged defendant be convicted of falsifying a fact on a passport application to facilitate an act of international terrorism. Should the charged defendant be convicted of a false statement without the intent to facilitate an act of international terrorism, the statutory maximum penalty is lower -- 10 years.

Case law is clear: any fact, other than the fact of a prior conviction, which increases the statutory maximum sentence is an element of the offense and must be charged in the indictment and found proven by a jury beyond all reasonable doubt. Alleyne v. United States, \_\_ U.S. \_\_, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013) ("Any fact that, by law, increases the penalty for a crime is an "element" of the offense), Apprendi v. New Jersey, 530 U.S. 466, 490, 12 S. Ct. 2348 147 L.Ed. 2d 435 (2000) ("with regard to federal law, the Fifth Amendment's Due Process Clause and the Sixth Amendment's notice and jury trial guarantees require that any fact other than prior conviction that increases the maximum penalty for a crime must be charged in an indictment and proved beyond a reasonable doubt."), Nguyen

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v. Holder, 763 F.3d 1022 (9<sup>th</sup> Cir. 2014)(the intent to facilitate an act of international terrorism, under 18 U.S.C. § 1544 is an element of the offense as it increases the maximum criminal penalty to which the defendant was exposed.)

Thus, intent to falsify a statement to facilitate an act of terrorism is an element of the offense and must be proven to the satisfaction of the jury, by the government beyond all reasonable doubt.

Respectfully submitted,

/s/

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cc: All Counsel